(18) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J. AND HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

CRIMINAL APPEAL NO. 120 OF 1992

Appellant : **Bhagwan Singh**, aged 22 years, S/o Govind Singh, R/o Mangora-Patpariapara, Police Station – Khadgaon, District Sarguja (M.P.).

versus

Non-Applicant : **State of Madhya Pradesh.**

Mr. R.S.Marhas, counsel for the appellant.
Mr. J.D.Bajpai, Additional Public Prosecutor for the non-applicant/State.

J U D G M E N T

(Delivered on 9th August, 2005)

PER DILIP RAOSAHEB DESHMUKH, J.

This appeal is directed against the judgment dated 12-12-1991 delivered in Sessions Trial No.191/91 by Shri M.C.Jain, Additional Judge to the District and Sessions Judge, Sarguja, whereby the appellant was convicted under Section 302 of the Indian Penal Code for committing murder of Deorati Bai and was sentenced to imprisonment for life.

(19)

2. Briefly stated the prosecution story is that the appellant Bhagwan Singh had worked as a labourer while digging a Well for Mohan Singh. On 14-6-1991 at about 8 P.M., Deorati Bai, wife of Mohan Singh, carrying a Tin, had gone to the house of the appellant to fetch DALDA. The appellant asked for his wages from Deorati Bai, whereupon she started abusing him filthily and left for her house. Enraged by this the appellant followed her and near the Nala struck Deorati Bai thrice on the head by a wooden *Peedha*, as a result of which, she fell down in the water and shouted. The appellant dragged Deorati Bai out of the Nala and further assaulted her by the wooden *Peedha* on the right leg and knee several times. Bramha Singh, P.W.-1 and Pyare Singh, P.W.-2, who on hearing the noise reached the spot soon after, asked the appellant who told them that he had assaulted Deorati Bai by the wooden *Peedha*. Deorati Bai also told the abovementioned witnesses that Bhagwan Singh had assaulted her by a wooden *Peedha*. Bramha Singh, P.W.-1 and Pyare Singh, P.W.-2 saw that Deorati Bai had sustained injuries in the head, nose and right leg and was bleeding from the nose. They took Deorati Bai to her house. She succumbed to the injuries on the same day.

3. The appellant went to Police Station Khadgawan and lodged F.I.R., Ex.P-12 on 15-6-1991 at 11.30 A.M. Assistant Sub-Inspector, Bechu Singh, P.W.-5 reached the spot and prepared Panchanama of the dead body vide Ex.P-15. Blood stained soil, plain soil, some broken bangles and a Tin were seized vide Ex.P.-1 from the place of occurrence i.e. near Khariya Nala. One wooden *Peedha* was seized at the instance of the appellant on 16-6-1991 vide Ex.P-3. Dr.

K.L.Banjare, P.W.-4, conducted the post mortem examination and found the following injuries on Deorati Bai : -

(i) Swelling over right parietal, temporal and occipital region of head. Size varied from 8 cm x 5 cm to 4 cm x 4 cm.

(ii) Swelling over middle of forehead. Size 7 cm x 5 cm.

(iii) Swelling over upper 1/3rd of right leg, fracture of right tibia and fibula 7 cm below the upper end of bone.

He found fracture of the occipital bone and the right temporal bone with blood clots as well as laceration present on the occipital region. He also found blood clots over the occipital and right temporal region. There was swelling at the right side of chest at the 9th, 10th and 11th rib at mid auxiliary line with blood clots present at the side. He also found that right tibia and fibula were fractured. In the opinion of Dr. K.L.Banjare, P.W.-4, mode of death was shock due to injury on the occipital and right temporal region of the head and excessive hemorrhage from the brain. All the injuries, in his opinion, were ante mortem and homicidal in nature. After completion of investigation, the appellant was prosecuted under Section 302 of the Indian Penal Code. The appellant claimed trial, pleaded false implication and led no evidence.

4. The trial Judge, relying upon the testimony of Bramha Singh, P.W.-1 and Pyare Singh, P.W.-2 regarding having seen the injured Deorati Bai and the extra judicial confession made by the appellant on the spot and the dying declaration of Deorati Bai coupled with the medical evidence of Dr. K.L.Banjare, P.W.-4, convicted the appellant under Section 302 of the Indian Penal Code and sentenced him as aforesaid.

5. Mr. Marhas, learned counsel for the appellant, appearing as amicus curiae, has not assailed the finding of the trial Judge that the appellant had caused the death of Deorati Bai. He has only contended that, the appellant was acting under grave and sudden provocation on account of the non-payment of wages as also the filthy abuses hurled at him by the deceased and, therefore, the offence squarely falls under Exception 1 to Section 300 of the Indian Penal Code and does not travel beyond Section 304 Part II of the Indian Penal Code. He also contended that the appellant was in jail since 16-6-1991 i.e. for more than 14 years.

6. On the other hand, learned Additional Public Prosecutor has supported the judgment of the trial Judge and argued that the manner in which the appellant repeatedly assaulted the old lady Deorati Bai by a wooden *Peedha* on the head causing fractures on vital parts, and after Deorati Bai fell inside the water, dragged her outside and further assaulted her in such a manner that she sustained fractures on right tibia as well as fibula, leaves no room for any doubt that the act of the appellant was one of deliberation and intentional and that the appellant had committed murder of Deorati Bai in cold blood.

7. We have considered the rival submissions. We have also gone through the record of Sessions Trial No.191/91. The testimony of Dr. K.L.Banjare, P.W.-4 proves beyond doubt that Deorati Bai, an old lady of 60 years, had sustained fracture of the right parietal and temporal bone with blood clots underneath with swelling over middle of forehead and that death of Deorati Bai was homicidal and was

caused due to injuries on occipital and right temporal region due to excessive hemorrhage from the brain. It is also borne out from the medical evidence that Deorati Bai had also sustained fracture of the right tibia and fibula.

8. We have also considered the testimony of Bramha Singh, P.W.-1, who had reached the spot while the appellant was assaulting Deorati Bai. The testimony of Bramha Singh, P.W.-1 and Pyare Singh, P.W.-2 further establishes that Deorati Bai had made an oral dying declaration before these witnesses that the appellant Bhagwan Singh had assaulted her. The testimony of these witnesses further establishes that, on being asked, the appellant had made an extra judicial confession before these witnesses. Their testimony has stood unrebutted in cross-examination and is fully corroborated by the medical evidence. Having thus considered the evidence led by the prosecution, we are of the considered opinion that the evidence led by the prosecution proves beyond doubt that the appellant had caused the death of Deorati Bai.

9. The only question which remains to be considered is whether the act of the appellant falls within Exception 1 to Section 300 of the Indian Penal Code. Learned counsel for the appellant drew our attention to para 4 of the testimony of Bramha Singh, P.W.1 and made an abortive attempt to bring the case of the appellant within Exception 1 to Section 300 of the Indian Penal Code by arguing that, non-payment of wages and the filthy abuses enraged the appellant to such an extent that he unintentionally caused the death of Deorati Bai. However, the act of the appellant in repeatedly assaulting Deorati Bai on vital parts i.e. the head to such an extent

that she sustained fracture not only on the right temporal bone but also on the occipital bone with excessive hemorrhage from brain and swelling over middle of forehead and swelling at the 9th, 10th and 11th rib on right side of chest at mid axillary line with blood clots present and further the act of the appellant in repeatedly assaulting Deorati Bai on the right leg to such an extent that she sustained fracture on right tibia and fibula, clearly indicates that, the act of the appellant was one of deliberation and the appellant intended to cause the death of Deorati Bai. It is also pertinent to note that para 4 of the testimony of Bramha Singh, P.W.-1 shows that Deorati Bai was alleged to have abused the appellant at his house while refusing to pay wages whereas the incident occurred after the appellant had followed her up to the Nala. Thus the act of the appellant in causing the death of Deorati Bai was not spontaneous after he was abused by Deorati Bai. It therefore cannot be said that the appellant was deprived of the power of self control by grave and sudden provocation.

10. Having thus considered the evidence led by the prosecution in its entirety, we are of the considered opinion that the appellant committed murder of Deorati Bai in cold blood and was rightly convicted by the trial Judge under Section 302 of the Indian Penal Code. The conviction of the appellant and the sentence awarded by the trial Judge, therefore, call for no interference. The appeal is dismissed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge

G.Singh